

1 ROBERT ELIAS VENTURA (V# 80485)
2 CORCORAN STATE PRISON (SHU)
3 P.O. BOX 3476
4 CORCORAN, CA, 93212.

FILED A

JUN 18 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT E. VENTURA,
PETITIONER,

No. C08-01708SBA(PR)

v.

DARREL ADAMS, WARDEN,
RESPONDENT.

MOTION FOR RECONSIDERATION
(F.R.C.P. RULE 60(b));
AND AMENDED MOTION
FOR APPOINTMENT OF
COUNSEL. (28 U.S.C.
§ 2255 RULES, 8(c).)

TO THE HONORABLE UNITED STATES DISTRICT COURT
JUDGE SANDRA BROWN ARMSTRONG PRESIDING IN THE ABOVE
ENTITLED COURT :

I, ROBERT ELIAS VENTURA, PETITIONER, A LAYMAN-
AT-LAW, HEREIN MOVES THIS HONORABLE COURT FOR
RECONSIDERATION PURSUANT TO FEDERAL RULES OF CIVIL
PROCEDURE - RULE 60(b) IN ORDER OF DENIAL ON
PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL.

THIS MOTION IS BASED UPON THE MOVANT-
PETITIONER'S AFFIDAVIT IN SUPPORT OF HIS MOTION
FOR RECONSIDERATION AND AMENDED MOTION FOR
APPOINTMENT OF COUNSEL IN THE FOREGOING MATTER.
AS WELL AS THE WITHIN STATEMENT OF FACTS AND

1 CONTENTIONS IN MEMORANDUM OF POINTS AND
2 AUTHORITIES .
3

4 FACTS
5

6 ON MARCH 28, 2008 PETITIONER FILED A
7 NOTICE OF APPEAL IN YOUR RESPECTIVE COURT FROM
8 FINAL JUDGEMENT AN ORDER OF DENIAL ON PETITION
9 FOR REVIEW. ALSO, ON MARCH 28, 2008 PETITIONER
10 FILED A MOTION FOR APPOINTMENT OF COUNSEL.

11 PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL
12 WAS DONE HASTILY, IN LAYMAN FORM, AND LACKED
13 ANY LEGAL STANDING. ON MAY 30, 2008, JUDGE
14 SAUNDRA BROWN ARMSTRONG DENIED WITHOUT
15 PREJUDICE; ON THE COURT'S SUA SPONTE RECONSIDERATION
16 DEPENDENT OF THE COURT'S FINDING OF NECESSITY
17 OF AN EVIDENTIARY HEARING FOLLOWING CONSIDERATION
18 OF THE MERITS OF PETITIONER'S CLAIMS. PETITIONER'S
19 HEREIN NOW BRINGS AN AMENDED MOTION FOR
20 APPOINTMENT OF COUNSEL.
21
22

23 CONTENTIONS
24

25 LEGAL AUTHORITY FOR APPOINTMENT AND
26 COMPENSATION OF COUNSEL IS ARTICLE I, SECTION
27 §15 OF THE CALIFORNIA CONSTITUTION; THE SIXTH
28

1 AMENDMENT OF THE U.S. CONSTITUTION; 23 U.S.C.,
 2 SECTION § 1915(d); 18 U.S.C., SECTION § 3006
 3 A (9), AS INTERPRETED IN MC CLAIN V. MANSION,
 4 343 F. SUPP. 382 [D. CONN. 1972]; PAYNE V.
 5 SUPERIOR COURT, (1975) 17 CAL. 3d 908; SALAS V.
 6 CORTEZ (1978) 24 CAL. 3d 22; PRICE V. JOHNSON,
 7 161 F.2d 705; YARBOROUGH V. SUPERIOR COURT,
 8 (1983) 150 CAL. APP. 3d 388; AND CALIFORNIA'
 9 PENAL CODE, SECTION § 1191.1, WHICH EXPRESSLY
 10 GRANTS A RIGHT TO COUNSEL AND EQUAL PROTECTION
 11 TO INDIGENT IMPRISONED INMATES UPON REQUEST.

12 "AS A MATTER OF EQUAL PROTECTION AND DUE
 13 PROCESS UNDER BOTH THE FEDERAL AND CALIFORNIA
 14 CONSTITUTIONS A PRISONER AS A DEFENDANT (OR
 15 PETITIONER OR PLAINTIFF) IN A 'BONA FIDE LEGAL
 16 ACTION THREATENING HIS INTEREST', IS EXPOSED TO
 17 JUDICIALLY SANCTIONED DEPRIVATIONS AND IS ENTITLED
 18 TO ACCESS TO THE COURTS IN ORDER TO HAVE A
 19 'MEANINGFUL OPPORTUNITY TO BE HEARD AND TO
 20 HAVE ASSISTANCE OF COMPETENT COUNSEL!'"

21 YARBOROUGH V. SUPERIOR, SUPRA CITING PAYNE
 22 V. SUPERIOR COURT, SUPRA.

23 MOREOVER, PETITIONER REQUESTS THAT
 24 COUNSEL BE APPOINTED IN THIS MATTER SO THAT
 25 PETITIONERS' INTERESTS MAY BE PROTECTED BY
 26 THE PROFESSIONAL ASSISTANCE REQUIRED. ADDITIONALLY,
 27 WHEN A COURT ISSUES AN ORDER TO SHOW CAUSE,
 28 COUNSEL MUST BE APPOINTED FOR AN INDIGENT

PETITIONER WHO REQUESTS COUNSEL. (18 U.S.C. § 3006 A. (9).) IF AN EVIDENTIARY HEARING IS ORDERED, THIS DISCRETIONARY POWER BECOMES A MANDATORY RULE FOR APPOINTMENT. (FEDERAL HABEAS RULE 8(C).) GENERAL COUNSEL SHOULD BE APPOINTED WHERE "FUNDAMENTAL FAIRNESS" REQUIRES IT. (SEE SCHULTZ V. WAINWRIGHT (11TH CIR. 1983) 701 F.2d 722, 728-730; Williams v. Missouri (8TH CIR. 1981) 640 F.2d 140, 144 CERT. DEN. 451 U.S. 990; SEE WIRES § 8-41.)

FEDERAL JUDGES ALSO HAVE THE DISCRETION TO APPOINT COUNSEL IN OTHER CIRCUMSTANCES IF IT IS IN THE INTERESTS OF JUSTICE; COURTS MAKING SUCH A DETERMINATION WILL CONSIDER THE STRENGTH OF THE ISSUES, THE PETITIONERS ABILITY TO ARTICULATE THE CLAIMS AND THE COMPLEXITY OF THE CASE. (18 U.S.C. § 3006 A, 28 U.S.C. §§ 1915 (d), 2254 (h) FEDERAL RULES OF HABEAS CORPUS, RULE 8(C); BASHOR V. RISLEY (9TH CIR. 1984) 730 F.2d 1228.)

IN CERTAIN EXCEPTIONAL CIRCUMSTANCES, THE COURT MAY REQUEST THE VOLUNTARY ASSISTANCE OF COUNSEL PURSUANT TO 28 U.S.C. § 1985(e)(1). TERREL V. BREWER, 935 F.2d 1015, 1017 (9TH CIR. 1991). [A FINDING OF EXCEPTIONAL CIRCUMSTANCES REQUIRES AN EVALUATION OF BOTH THE LIKELIHOOD OF THE PETITIONER TO ARTICULATE HIS CLAIMS PRO SE IN LIGHT OF THE COMPLEXITY OF THE LEGAL ISSUES

1 INVOLVED; NEITHER OF THESE FACTORS IS DISPOSITIVE
 2 AND BOTH MUST BE VIEWED TOGETHER BEFORE
 3 REACHING A DECISION. WILBURN V. ESCALDERON,
 4 789 F.2d 1328 AT 1331 (9TH CIR. 1986) TERREL
 5 DEMONSTRATED SUFFICIENT WRITING ABILITY AND
 6 LEGAL KNOWLEDGE TO ARTICULATE HIS CLAIM.];
 7 WOOD V. HOUSEWRIGHT, 900 F.2d 1332, 1335-
 8 36 (9TH CIR. 1990) [10] COUNSEL SHOULD ONLY
 9 BE APPOINTED IN EXCEPTIONAL CIRCUMSTANCE,
 10 BASED ON SUCH FACTORS AS THE LIKELIHOOD OF
 11 SUCCESS ON THE MERITS AND THE ABILITY OF THE
 12 PETITIONER TO ARTICULATE HIS CLAIMS IN LIGHT OF
 13 THEIR COMPLEXITY. WILBURN V. ESCALDERON, 789
 14 F.2d 1328 AT 1331 (9TH CIR. 1986). THE INSTANCES
 15 THAT WOOD CLAIMS INDICATE THE PRESENCE OF THESE
 16 FACTORS ARE DIFFICULTIES WHICH ANY LITIGANT WOULD
 17 HAVE IN PROCEEDING PRO SE; THEY DO NOT INDICATE
 18 EXCEPTIONAL FACTORS. AFFIRMED.]

19 I DECLARE UNDER PENALTY OF PERJURY THAT
 20 THE FOREGOING IS TRUE AND CORRECT, AND THAT THIS
 21 DECLARATION WAS EXECUTED ON THIS DATE 6-12-08
 22 AT CORCORAN, CALIFORNIA.

23 DATED: 6-12-08.

24
 25 Respectfully Submitted,
 26 Robert Elias Ventura
 27 ROBERT ELIAS VENTURA

28 11

PRAYER FOR RELIEF

WHEREFORE, PETITIONER PRAYS FOR THE
following relief : AND IS WITHOUT REMEDY SAVE
BY WRIT OF HABEAS CORPUS. WHEREFORE, PETITIONER
PRAYS THAT THE COURT :

1.) GRANT MOTION FOR RECONSIDERATION
PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE,
RULE 60(b);

2.) REHEAR AND GRANT PETITIONER'S MOTION
FOR APPOINTMENT OF COUNSEL;

3.) ISSUE AND ORDER TO SHOW CAUSE;

4.) CONDUCT AN EVIDENTIARY HEARING;

5.) Allow petitioner to conduct discovery

6.) DECLARE petitionERS Rights;

7) Appoint counsel and award reasonable attorney fee's ;

8.) GRANT SUCH FURTHER RELIEF AS THE COURT
DEEMS JUST AND PROPER.

DATED: 6-12-08

Respectfully Submitted,
Robert Elias Ventura
ROBERT ELIAS VENTURA
(Petitioner in pro-se.).

PETITIONER'S AFFIDAVIT

1
2
3 1.) I, ROBERT ELIAS VENTURA, DECLARE THAT
4 I AM THE PETITIONER IN THE ABOVE - REFERENCED
5 MATTER, THAT I AM INCARCERATED AT CALIFORNIA
6 STATE PRISON AT CORCORAN (SHU), AND THAT I AM
7 INDIGENT AND ILLITERATE AND UNABLE TO AFFORD
8 COUNSEL. MY TOTAL ASSETS ARE \$ 00.00 AND MY
9 INCOME IS \$ 00.00 PER MONTH;

10 2.) I AM THE PETITIONER IN A 28 U.S.C. § 2254
11 A PETITION FOR WRIT OF HABEAS CORPUS IN THE
12 UNITED STATES DISTRICT COURT;

13 3.) THE ISSUES INVOLVED IN THIS CASE ARE
14 FACTUALLY COMPLEX AND LEGALLY INTRICATE AND
15 HARD FOR ME TO COMPREHEND AND UNDERSTAND THE
16 CASE AT ISSUE. SEE EXHIBIT ____);

17 4.) PETITIONER CONTENDS THAT THE DISTRICT
18 COURT JUDGE'S JUDGEMENT IN THE INSTANT
19 MATTER WAS BASED ON AN ERRONEOUS LEGAL
20 PREMISE OR A MISUNDERSTANDING OF THE FACTS
21 THAT COULD BE READILY CORRECTED BY
22 RECONSIDERATION AND REHEARING;

23 5.) PETITIONER DOES NOT ATTACK THE SUBSTANCE
24 OF THE DISTRICT COURT'S RESOLUTION OF HIS CLAIMS
25 ON THE MERITS, BUT SOME DEFECTS IN THE
26 INTEGRITY OF THE HABEAS CORPUS FEDERAL
27 PROCEEDING (i.e. DENIAL OF MOTION FOR
28 APPOINTMENT OF COUNSEL.);

6.) PETITIONER WON'T BECOME LITERATE AND LEARN ANY MINIMAL LAW WITHIN THE AMOUNT OF TIME IT TAKES TO PROCESS THIS 28 U.S.C. § 2254 PETITION FOR WRIT OF HABEAS CORPUS IN THE UNITED STATES DISTRICT COURT;

7.) PETITIONER IS CONFINED IN A SECURITY
HOUSING UNIT AND HAS VIRTUALLY NO VIABLE
ACCESS TO A LAW LIBRARY OR LEGAL MATERIALS;

9 8.) THE PETITIONERS FRIEND (LEONEL CANO,
10 F#53299) WAS AN INMATE WHO NO LONGER
11 RESIDES AT C.S.P. - CORCORAN (SHU) AND ASSISTED
12 PETITIONER TO WRITE BOTH THE 28 U.S.C. §2254
13 IN THE U.S. DISTRICT COURT AND THIS MOTION
14 FOR RECONSIDERATION;

15 9.) PETITIONER HAS NO ASSISTANCE IN LAW AND
16 WITHOUT HIS FRIEND PETITIONER HAS NO ASSISTANCE
17 IN THE LAW ;

18 10.) PETITIONER WAS DENIED EFFECTIVE ASSISTANCE
19 OF COUNSEL AT ALL STAGES - TRIAL THRU APPEALS
20 PROCESS - IN THE STATE COURT LEVEL. (SEE EX. ____);

22 I, ROBERT CLIAS VENTURA, declare under
23 PENALTY OF PERJURY THAT THE foregoing is TRUE
24 AND CORRECT, AND THAT THIS AFFIDAVIT WAS
25 EXECUTED ON THIS DATE 6-12-08 AT CORCORAN,
26 CALIF.

Respectfully submitted,
Robert Elias Ventura
ROBERT ELIAS VENTURA
(PETITIONER IN PRO-SE).

FILED

MAY 20 2008

DEPARTMENT OF JUSTICE
U.S. ATTORNEY'S OFFICE
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 ROBERT E. VENTURA,

No. C 08-01708 SBA (PR)

12 Petitioner,

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

13 v.

14 DARREL ADAMS, Warden

15 Respondent.
_____/

17 Petitioner has requested appointment of counsel in this action.

18 The Sixth Amendment right to counsel does not apply in habeas corpus actions. See
19 Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B),
20 however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the
21 court determines that the interests of justice so require" and such person is financially unable to
22 obtain representation. The decision to appoint counsel is within the discretion of the district court.
23 See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v.
24 Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made appointment of counsel the
25 exception rather than the rule by limiting it to: (1) capital cases; (2) cases that turn on substantial and
26 complex procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or
27 mentally or physically impaired petitioners; (4) cases likely to require the assistance of experts either
28 in framing or in trying the claims; (5) cases in which petitioner is in no position to investigate crucial

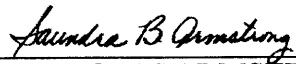
1 facts; and (6) factually complex cases. See generally 1 J. Liebman & R. Hertz, Federal Habeas
2 Corpus Practice and Procedure § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only
3 when the circumstances of a particular case indicate that appointed counsel is necessary to prevent
4 due process violations. See Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th Cir.
5 1965).

6 At this early stage of the proceedings the Court is unable to determine whether the
7 appointment of counsel is mandated for Petitioner. Accordingly, the interests of justice do not
8 require appointment of counsel at this time, and Petitioner's request is DENIED. This denial is
9 without prejudice to the Court's sua sponte reconsideration should the Court find an evidentiary
10 hearing necessary following consideration of the merits of Petitioner's claims.

11 This Order terminates Docket no. 2.

12 IT IS SO ORDERED.

13 Dated: 5/29/08

14 
15 SAUNDRA BROWN ARMSTRONG
16 United States District Court Judge

United States District Court
For the Northern District of California

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ROBERT E. VENTURA,

5 Plaintiff,

6 v.

7 DARREL ADAMS et al,

8 Defendant.

Case Number: CV08-01708 SBA

CERTIFICATE OF SERVICE

9

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
Northern District of California.

11 That on May 30, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
13 in the Clerk's office.

14

15 Robert Elias Ventura V-80485
16 CSP - Corcoran State Prison
P.O. Box 3476
17 Corcoran, CA 93212-3476

18 Dated: May 30, 2008

Richard W. Wiking, Clerk
By: LISA R CLARK, Deputy Clerk

PROOF OF SERVICE BY MAIL

I, Robert Elms Ventures declare that I am over 18 years of age, and a party to the attached herein cause of action, that I reside at California State Prison at Corcoran, in the County of King, California.

My mailing address is: C.S.P - SHU. 4A - 3L - 41

P.O. Box 3476 CORCORAN CAL. 93212-3476

On APRIL 17, 2008, I delivered to prison officials for mailing, at the above address, the attached: Motion For Counsel AND Application

For Waiver of Court Fees and Costs. Supreme Court

CASE NO. H032716 / CC45519; Declaration; Transcripts Rule 33(a)
Rule 35(b)

in sealed envelope(s), with postage fully prepaid, and addressed to the following:

(1) Frederick K. OHIRICH (2) Attorney General

350 McAllister Street

455 Golden Gate Ave (Suite 11000)

San Francisco CA 94102

San Francisco, CA 94102

(3) _____ (4) _____

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 17 day of APRIL, 2008, at California State Prison, Corcoran.

Robert Elms Ventures
In Pro Per

RECEIVED

APR 23 2008

CLERK SUPREME COURT

Proof of Service - Mail

PROOF OF SERVICE

Re: Case Number S162926
Case Title Ventura (Robert) on H.C. (review)

I hereby declare that I am a citizen of the United States, am over 18 years of age, and am not a party in the above-entitled action. I am employed in ~~reside in~~ the County of San Francisco and my business ~~residence~~ address is 350 McAllister, room 1295, San Francisco, Ca 94102

On April 23, 2008, I served the attached document described as a petition for review

on the parties in the above-named case. I did this by enclosing true copies of the document in sealed envelopes with postage fully prepaid thereon. I then placed the envelopes in a U.S. Postal Service mailbox in San Francisco, California, addressed as follows:

Office of the Attorney General
San Francisco
455 Golden Gate Avenue
Suite 11000
San Francisco, Ca 94102

COURT OF APPEAL
SIXTH APPELLATE DISTRICT
333 W. SANTA CLARA ST.
SAN JOSE, CA 95113

I, Joseph Cornetta, declare under penalty of perjury that the foregoing is true and correct.

Executed on April 23, 2008, at 350 McAllister
San Francisco, California.

Joseph Cornetta
Signature

RECEIVED

S162926

1 Robert Ventura - CDR # V80485
2 CSP-Corcoran SHU 4A 3L-3
3 P.O. Box 3476
3 Corcoran, CA. 93212-3476
4 In Propria Persona

5

6 IN THE CALIFORNIA SUPREME COURT

7
8
9 Robert Ventura
10 Petitioner,
11
12 On Habeas Corpus

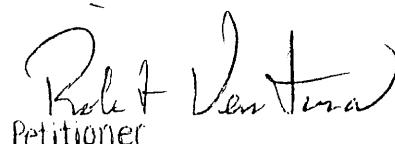
NO. H032716 / NO. CC455114
REQUEST FOR APPOINTMENT
OF COUNSEL AND DECLARATION
OF INDIGENCY

13
14
15 I, Robert Ventura, declare that I am a petitioner to the above-referenced matter, that
16 I am incarcerated at CSP-Corcoran SHU, and that I am indigent and unable to afford counsel.
17 My total assets are \$00.00 and my income is \$00.00 per month.

18 I hereby request that counsel be appointed in this matter so that my interests may
19 be protected by the professional assistance required. Government Code § 15421; Penal Code
20 § 1240; Griffin V. Illinois (1956) 351 U.S. 12 [76 S.Ct. 585; 100 L.Ed. 89]; Douglas V. California
21 (1963) 372 U.S. 353 [9 L.Ed. 2d 811]; In re Henderson (1964) 61 Cal.2d 541 [39 Cal. Rptr. 373].
22 In addition, when a court issues an order to show cause, counsel must be appointed for
23 an indigent petitioner who request counsel. California Rules of Court, rule 4.551 (c)(2).

24 I declare under penalty of perjury that the foregoing is true and correct and that
25 this declaration was executed on APRIL 17, 2008.

26
27
28


Robert Ventura
Petitioner

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SIXTH APPELLATE DISTRICT



SIXTH APPELLATE DISTRICT

MAR 24 2008

MICHAEL J. VERNET, Clerk

By _____ DEPUTY

In re ROBERT VENTURA,
on Habeas Corpus.

H032716
(Santa Clara County
Super. Ct. No. CC455119)

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Bamattre-Manoukian, Acting P.J., Mihara, J., and McAdams, J.,
participated in this decision.)

BAMATTRE-MANOUKIAN, J.

Dated MAR 24 2008 Acting P.J.

MARY JAMESON
 AUTOMATIC APPEALS SUPERVISOR
 JORGE NAVARRETE
 SUPERVISING DEPUTY CLERK
 SAN FRANCISCO
 —
 NATALIE ROBINSON
 SUPERVISING DEPUTY CLERK
 LOS ANGELES



SAN FRANCISCO 94102
 EARL WARREN BUILDING
 350 MCALLISTER STREET
 (415) 865-7000
 —
 LOS ANGELES 90013
 RONALD REAGAN BUILDING
 300 SOUTH SPRING STREET
 (213) 830-7570

Supreme Court of California

FREDERICK K. OHLRICH
 COURT ADMINISTRATOR AND
 CLERK OF THE SUPREME COURT

April 24, 2008

Robert Ventura, CDC# V-80485
 California State Prison, Corcoran
 P. O. Box 3476
 Corcoran, Ca 93212

Re: S162926 – Ventura (Robert) on H.C. (review)

Dear Mr. Ventura:

No action may be taken on your request to appoint counsel to represent you in the above-referenced case. The court does not appoint counsel in these matters unless review is granted. Should the court issue an order granting review, you will be notified and provided with the appropriate form to assist this office with the appointment of counsel to represent you.

Very truly yours,

FREDERICK K. OHLRICH
 Court Administrator and
 Clerk of the Supreme Court

Joseph Cornetta

By: Joseph Cornetta, Deputy Clerk

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

OFFICE OF THE STATE PUBLIC DEFENDER

221 Main Street, 10th Floor
San Francisco, California 94105
Telephone: (415) 904-5600
Fax: (415) 904-5635



April 4, 2008

Mr. Robert Ventura

V-80485

P.O. Box 3476

Corcoran, CA 93212

Dear Mr. Ventura:

This office has received your letter requesting our assistance in challenging your convictions for domestic violence and assault with a deadly weapon. I am sorry, but our office only represents people who have been sentenced to death and only in, and by appointment of, the California Supreme Court. We are not allowed to represent anyone else on any other matters.

I would recommend that you contact the appellate project serving Santa Clara County, where you were convicted. They should be able to provide you with the information you need about the process of challenging a conviction. The following is their contact information:

Sixth District Appellate Program
100 N. Winchester Blvd., Suite 310
Santa Clara, CA 95050
408-241-6171

Again, I am sorry that this office cannot be of assistance to you. Best of luck with your case.

Sincerely,

A handwritten signature in black ink, appearing to read "DR".

C. Delaine Renard
Deputy State Public Defender

47

1 Robert Elins Ventura CDC # V-80485
2 CSP-CORCORAN 4A-3R-44
3 P.O. Box 3476 E-filing
4 CORCORAN, CA. 93212-3476

E-filing

6 UNITED STATES DISTRICT COURT FOR THE NORTHERN
7 DISTRICT OF CALIFORNIA

8 ROBERT ELIAS VENTURA
9 PLAINTIFF

Nc

SBA

(PR)

11 V.
12 ADAMS (WARDEN)
13 DEFENDANT

REQUEST FOR APPOINTMENT OF
COUNSEL AND DECLARATION OF
INDIGENCE IN SUPPORT

16 I, Robert Elias Ventura, DECLARE THAT I AM A PETITIONER
17 TO THE ABOVE-REFERENCED MATTER, THAT I AM INCARCERATED AT CSP-
18 CORCORAN, AND THAT I AM INDIGENT AND ILLITERATE AND UNABLE TO
19 AFFORD COUNSEL. MY TOTAL ASSETS ARE \$ 00.00 AND MY INCOME IS
20 \$ 00.00 PER MONTH.

21 I HEREBY REQUEST THAT COUNSEL BE APPOINTED IN THIS MATTER SO
22 THAT MY INTERESTS MAY BE PROTECTED BY THE PROFESSIONAL ASSISTANCE
23 REQUIRED. IN ADDITION, WHEN A COURT ISSUES AN ORDER TO SHOW CAUSE,
24 COUNSEL MUST BE APPOINTED FOR AN INDIGENT PETITIONER WHO REQUEST
25 COUNSEL. (18 U.S.C. § 3006 A. (9).) IF AN EVIDENTIARY HEARING IS ORDERED,
26 THIS DISCRETIONARY POWER BECOMES A MANDATORY RULE FOR APPOINTMENT.
27 (FEDERAL HABEAS RULE 8 (c).) GENERAL COUNSEL SHOULD BE APPOINTED
28 WHERE "FUNDAMENTAL FAIRNESS" REQUIRES IT. (see SCHULTZ V. WAINWIR

1 NOTICE OF APPEAL TO A COURT OF APPEALS FROM A JUDGMENT.
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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

E-filing

ROBERT ELIAS VENTURA

PLAINTIFF

v.

DARREL ADAMS,

DEFENDANT.

Notice of Appeal

CV 08 1708

ND.

SBA

(PR)

Notice is hereby given that ROBERT ELIAS VENTURA
PLAINTIFF IN THE ABOVE NAMED CASE, hereby appeal to the
UNITED STATES COURT OF APPEALS FOR THE SUPREME
COURT OF CALIFORNIA FROM THE FINAL JUDGMENT from
AN ORDER (THE PETITION FOR REVIEW IS DENIED). SEE
ATTACHED DOCUMENT..

ENTERED IN THIS ACTION ON THE 12 DAY OF MARCH,
2008.

Dates: March 21 2008

Respectfully Submitted
Robert Ventura

ROBERT VENTURA -CDCR#V-80485
 SP-CORCORAN (SHU) 4A 3L-3
 P.O. BOX 3476
 CORCORAN, CA. 93212-3476

41

In Pro Per

IN THE CALIFORNIA SUPREME COURT

COUNTY OF SAN FRANCISCO

No. S160550

In re

Robert Ventura

On Habeas Corpus

REQUEST FOR APPOINTMENT
OF COUNSEL AND DECLARATION
OF INNOCENCE

MAR 3 - 2008

CLERK SUPREME COURT

I, Robert Ventura, declare that I am a petitioner to the above-referenced matter, that I am incarcerated at [place prison here], and that I am indigent and unable to afford counsel. My total assets are \$ 0 and my income is \$ 0 per month.

I hereby request that counsel be appointed in this matter so that my interests may be protected by the professional assistance required. In addition, when a court issues an order to show cause, counsel must be appointed for an indigent petitioner who requests counsel.

California Rules of Court, rule 4.551 (c)(2).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 25, 2008.



Petitioner

MARY JAMESON
AUTOMATIC APPEALS SUPERVISOR
JORGE NAVARRETE
SUPERVISING DEPUTY CLERK
SAN FRANCISCO

NATALIE ROBINSON
SUPERVISING DEPUTY CLERK
LOS ANGELES



SAN FRANCISCO 94102
EARL WARREN BUILDING
350 McALLISTER STREET
(415) 865-7000

LOS ANGELES 90013
RONALD REAGAN BUILDING
300 SOUTH SPRING STREET
(213) 830-7570

Supreme Court of California

FREDERICK K. OHLRICH
COURT ADMINISTRATOR AND
CLERK OF THE SUPREME COURT

January 24, 2008

Robert Ventura V-80485
CSP- Corcoran
P.O. Box 3476
Corcoran, CA 93212-3476

Re: **H032325- VENTURA ON HABEAS CORPUS**

Dear Mr. Ventura:

The court does not appoint counsel for filing a petition for review. The record discloses that the Court of Appeal filed an order denying your petition on January 9, 2008. Under court rules, the last day a petition for review could be timely filed was January 19.

An original and ten legible typewritten copies of a petition for review are required. Each must have a copy of the Court of Appeal decision attached. Service of a copy on the Court of Appeal and on the Office of the Attorney General is also required.

For good cause, the court may permit a late filing. In addition to the petition for review as described above, you must also submit an original only of an "Application for Relief from Default" which explains the reasons for failing to file a timely petition. The application must also contain the following signed declaration: "I declare under penalty of perjury that the above is true and correct."

After February 8, 2008, this court loses jurisdiction to consider or grant any relief of any nature in this case.

If you are unable to meet this deadline, you may file a habeas corpus petition. A form is enclosed.

Very truly yours,

FREDERICK K. OHLRICH
Court Administrator and
Clerk of the Supreme Court

By: Kenneth Wagovich, Senior Deputy Clerk

MARY JAMESON
AUTOMATIC APPEALS SUPERVISOR
JORGE NAVARRETE
SUPERVISING DEPUTY CLERK
SAN FRANCISCO

NATALIE ROBINSON
SUPERVISING DEPUTY CLERK

LOS ANGELES



SAN FRANCISCO 94102
EARL WARREN BUILDING
350 McALLISTER STREET
(415) 865-7000

LOS ANGELES 90013
RONALD REAGAN BUILDING
300 SOUTH SPRING STREET
(213) 830-7570

Supreme Court of California

FREDERICK K. OHLRICH
COURT ADMINISTRATOR AND
CLERK OF THE SUPREME COURT

January 24, 2008

Robert Ventura V-80485
CSP- Corcoran
P.O. Box 3476
Corcoran, CA 93212-3476

Re: **H032454- VENTURA ON HABEAS CORPUS**

Dear Mr. Ventura:

The court does not appoint counsel for filing a petition for review. The record discloses that the Court of Appeal filed an order denying your petition on January 8, 2008. Under court rules, the last day a petition for review could be timely filed was January 18.

An original and ten legible typewritten copies of a petition for review are required. Each must have a copy of the Court of Appeal decision attached. Service of a copy on the Court of Appeal and on the Office of the Attorney General is also required.

For good cause, the court may permit a late filing. In addition to the petition for review as described above, you must also submit an original only of an "Application for Relief from Default" which explains the reasons for failing to file a timely petition. The application must also contain the following signed declaration: "I declare under penalty of perjury that the above is true and correct."

After February 7, 2008, this court loses jurisdiction to consider or grant any relief of any nature in this case.

If you are unable to meet this deadline, you may file a habeas corpus petition. A form is enclosed.

Very truly yours,

FREDERICK K. OHLRICH
Court Administrator and
Clerk of the Supreme Court

By: Kenneth Wagovich, Senior Deputy Clerk

Enclosure

32

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Court of Appeal - Sixth App. Dist.



JAN 8 - 2008

MICHAEL J. YERLY, Clerk

In re ROBERT VENTURA,
on Habeas Corpus.

H032454
By _____ DEPUTY
(Santa Clara County
Super. Ct. No. CC455119)

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Premo, Acting P.J., Elia, J., and Duffy, J., participated in this decision.)

Dated JAN 8 - 2008 Premo, J. Acting P.J.

A handwritten signature in black ink, appearing to read "Michael J. Yerly".

12

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Court of Appeal - Sixth App. Dist.
FILED

JAN 9 - 2008

MICHAEL J. YEHLY, Clerk

By _____

DEPUTY

In re ROBERT VENTURA,
on Habeas Corpus.

H032325
(Santa Clara County
Super. Ct. No. CC455119)

BY THE COURT:

The petition for writ of habeas corpus, seeking an extension of time to file an opening brief on "appeal," is denied without prejudice. There is no appeal from the denial of a habeas petition by the superior court; rather, the petitioner must file an original habeas petition in the reviewing court. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7.)

Petitioner's request for appointment of counsel is denied without prejudice.

(Elia, Acting P.J., and Duffy, J., participated in this decision.)

JAN 9 - 2008

Dated _____

ELIA, J.

Acting P.J.

(3)

SIXTH DISTRICT APPELLATE PROGRAM

A Non-Profit Corporation

100 N Winchester Blvd., Suite 310
Santa Clara, CA 95050

(408) 241-6171 - Main
(408) 241-2877 - Fax

Executive Director
Michael A. Kresser

Assistant Director
Dallas Sacher

Law Office Manager
Yolanda Edwards

Staff Attorneys
Lori A. Quick
Vicki I. Firstman
William M. Robinson
Jonathan Grossman
Paul Couenhoven

January 7, 2008

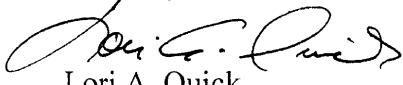
Robert Ventura
V-80485
Corcoran State Prison
P.O. Box 3476
Corcoran, CA 93212-3476

Dear Mr. Ventura,

I have received your letter postmarked January 4, 2008. It appears from your letter that you wish to file a petition for a writ of habeas corpus. As I wrote in my last letter, habeas petitions are considered civil proceedings, even if they arise from a criminal case. Generally, an indigent prisoner is not entitled to appointed counsel to assist with the preparation of a habeas petition. However, if an indigent prisoner files a habeas corpus petition and the court determines the petition states a prima facie case for relief, then due process considerations require the court to appoint counsel to represent the prisoner. (*People v. Barton* (1978) 21 Cal.3d 513, 519 fn. 3; *People v. Shipman* (1965) 62 Cal.2d 226, 232; Cal. Rules of Court, rule 4.551(c)(2).) It appears that you have already filed a habeas petition which was denied. Thus, you are not entitled to appointed counsel. (*People v. Clark* (1993) 5 Cal.4th 750, 783, fn. 20; *Redante v. Yockelson* (2003) 112 Cal.App.4th 1351, 1356.) We do represent indigent defendants on direct appeal when appointed by the Court of Appeal. However, you were sentenced on May 11, 2005. A notice of appeal should have been filed no later than July 10, 2005, two and one-half years ago. (California Rules of Court, rule 8.308(a).) It would be pointless to ask for permission to file a late notice of appeal at this late date.

Typically, when people in your position write to us for help, we advise them to file a habeas petition and we send them the appropriate form. Because you have already filed a petition which was denied, and because we do not represent you on that petition, there is nothing we can do for you. I am sorry we cannot be of more assistance. I wish you the best of luck.

Sincerely,


Lori A. Quick
Staff Attorney

(U)

SIXTH DISTRICT APPELLATE PROGRAM

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Yolanda Edwards

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Lori A. Quick
Vicki I. Firstman
William M. Robinson
Jonathan Grossman
Paul Couenhoven

December 28, 2007

Robert Ventura
V-80485
Corcoran State Prison
P.O. Box 3476
Corcoran, CA 93212-3476

Dear Mr. Ventura,

We have received several documents from you: a petition for writ of habeas corpus filed on July 17, 2007; a handwritten opening brief; a letter from the Court of Appeal declining to file a document for noncompliance with the rules of court; a Superior Court order filed October 3, 2007 denying a petition for writ of habeas corpus; and a request for appointment of counsel. Please be advised as follows.

First of all, I cannot help you with a petition for writ of habeas corpus. Because this is considered a civil proceeding, you are not entitled to appointed counsel. (*People v. Clark* (1993) 5 Cal.4th 750, 783, fn. 20; *Redante v. Yockelson* (2003) 112 Cal.App.4th 1351, 1356.) Although we do represent indigent defendants on direct appeal when appointed by the Court of Appeal, it appears from the paperwork you have sent that the time to file a notice of appeal is long past. Your habeas petition indicates that you were sentenced on May 11, 2005. This means you would have had to file a notice of appeal no later than July 10, 2005. (California Rules of Court, rule 8.308(a).) I can think of no reasonable justification to offer the Court for a failure to take action for two and one-half years, and therefore we cannot request permission to file a late notice of appeal.

I am sorry we could not be of more assistance. I wish you the best of luck.

Sincerely,


Lori A. Quick
Staff Attorney

FILED
DEC 26 2007

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara

BY SP DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

In re)
) No. CC455119
)
 ROBERT ELIAS VENTURA,) ORDER
)
 On Motion for Documents)

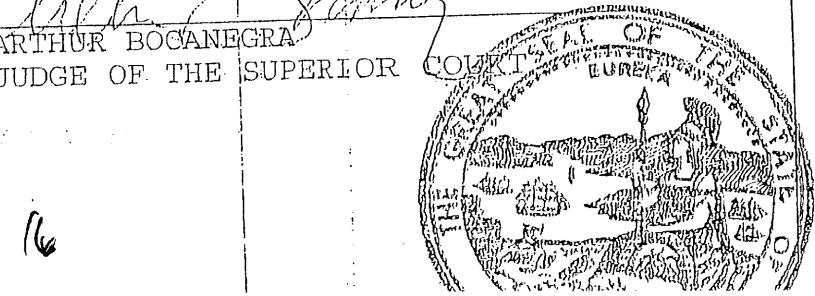
ROBERT ELIAS VENTURA has submitted a motion to this Court requesting free copies of various documents, and/or reports contained in his case file, and/or transcripts of the proceedings, which led to his incarceration. The motion/request is DENIED. Petitioner's declaration of indigency, citations to rules of court, Constitutional principles, case law, or statutes, and/or "Application for Waiver of Court Fees and Costs," form is not applicable when, as here, the time for trial and appeal has passed and there is no matter currently pending and active before this Court. (See People v. Markley (2006) 138 Cal.App.4th 230, 240-243.)

DATED: 12/26, 2007

 ARTHUR BOCANEGRA

JUDGE OF THE SUPERIOR COURT

cc: Petitioner
District Attorney
CJIC
Research (12-18A)



F I L E D

OCT 03 2017

KELLY DORE
Chief Executive Officer
Supior Court of California, County of Santa Clara
BY 11/10/2017 DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

In re) No. : CC455119
)
 ROBERT VENTURA,)
) ORDER
)
)

16 ROBERT VENTURA, hereinafter Petitioner, has submitted a petition
17 for writ of habeas corpus. Petitioner claims that the sentencing
18 court violated due process by imposing enhancements on the basis of
19 Petitioner's prior plea bargains. Petitioner also claims that his
20 counsel for a 1989 prior was ineffective for not informing him of all
21 the possible consequences of his plea and his counsel for the present
22 offense was ineffective for not enforcing the terms of his prior plea
23 bargains. In addition, Petitioner cites *California v. Cunningham*
24 (2007) 127 S. Ct. 856 as a basis for his challenge to the court's
25 imposition of consecutive sentences in this case.

Due Process

The case of *People v. Brady* (1995) 34 Cal.App. 4th 65 dealt with,

1 and rejected, arguments that there is a due process violation in the
2 application of the strike law.

3 Although the imposition of punishment which, after commission of
4 a crime, is increased or somehow made more onerous violates the ex
5 post facto clause of both the United States and California
6 Constitutions (U.S. Const., art. I, § 10, cl. 1; Cal. Const., Art. I,
7 §9), "[i]ncreased penalties for subsequent offenses . . .
8 attributable to the defendant's status as a repeat offender . . .
9 arise as an incident of the subsequent offense rather than
10 constituting a penalty for the prior offense. [Citations.]'" do not.
11 (People v. Weaver (1984) 161 Cal.App.3d 119, 124 [207 Cal.Rptr. 419],
12 quoting *In re Foss* (1974) 10 Cal.3d 910, 922 [112 Cal.Rptr. 649, 519
13 P.2d 1073].) People v. Brady (1995) 34 Cal.App.4th 65, 72.

14 The defendant in *Brady* had a single strike and therefore his
15 sentence was doubled and he was required to serve 80% of it. His
16 "strike" had been committed prior to the passage of the three strikes
17 law. That court rejected the same claim that Petitioner makes here,
18 by concluding that at the time the defendant had committed the
19 current offense the three strikes law "was in full force and effect.
20 Such gave him notice that he would be treated more severely since he
21 committed a new felony and had previously been convicted of a serious
22 felony. That such 'status' would subject him to subsection (c)(5)'s
23 credit limits was clearly spelled out. No due process or ex post
24 facto violation can be shown." (*Id.*, see also *People v. Hatcher*
25 (1995) 33 Cal.App.4th 1526.)

26 So too in the instant case, since as soon as the strike law came
27 into effect Petitioner had the status of being a striker, Petitioner

1 the defendant has failed to establish any prejudice, then the
2 performance prong need not be reached. (*Strickland v. Washington*,
3 *supra*, 466 U.S. at 697.)

4 Petitioner's claim of ineffective assistance of his prior
5 counsel rests on the assertion that he was not informed that his
6 convictions could be used in future cases to enhance his sentence.
7 However, as noted above, the "three strikes" law had not been enacted
8 at the time of Petitioner's prior plea. Thus, counsel cannot be held
9 ineffective for failing to inform Petitioner of a statutory scheme
10 that was not yet in place.

11 Imposition of Enhancements

12 Contrary to Petitioner's contention, his previous plea
13 bargain(s) do not insulate him from being subjected to enhancement(s)
14 based on the prior conviction(s). Petitioner was not being punished
15 again for the same offense addressed by a previous plea bargain.
16 Rather, Petitioner was punished for being a recidivist. "The purpose
17 of section 667 is to punish repeat offenders regardless of whether
18 they were imprisoned for their previous felony...to impose greater
19 punishment upon recidivists who commit serious felonies." (*People v.*
20 *Jones* (1993) 5 Cal.4th 1142; *People v. Medina* (1988) 206 Cal.App.3d
21 986.) See also *People v. Bernal* (1994) 22 Cal.App.4th 1455, 1457,
22 explaining:

23 When entering a guilty plea, the defendant must be
24 advised of the direct consequences of the conviction.
25 (*Bunnell v. Superior Court* (1975) 13 Cal.3d 592, 604.)
26 However, possible future use of a current conviction is
27 not a direct consequence of the conviction. (*People v.*
Crosby (1992) 3 Cal.App.4th 1352, 1356; see also *People v.*
Lewis (1987) 191 Cal.App.3d 1288, 1301; *Hartman v.*
Municipal Court (1973) 35 Cal.App.3d 891, 893.) A
defendant need not be advised of the possible future
consequences in the event the defendant commits

1 a later crime.

2 As there was no violation in sentencing Petitioner as a recidivist,
 3 there was no ineffective assistance of counsel, as alleged by
 4 Petitioner, for his attorney's failure to enforce the prior plea
 5 agreement.

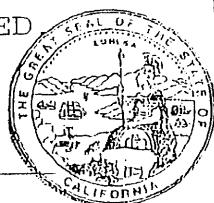
6 Cunningham

7 Petitioner claims that the court's imposition of consecutive
 8 terms violates the Supreme Court's recently articulated rule in
 9 *Cunningham v. California* (2007) 127 S. Ct. 856 interpreting its prior
 10 decision in *Blakely v. Washington* (2004) 542 U.S. 296. However the
 11 *Blakely* rule does not apply to the trial court's decision regarding
 12 imposition of consecutive or concurrent sentences. (*People v.*
 13 *Sandoval* (2007) 41 Cal.4th 825, 850-851; *People v. Sullivan* (2007)
 14 151 Cal.App.4th 524, 567-568.) Thus, Petitioner is not entitled to
 15 relief under *Cunningham*.

16 Petitioner's motion, and all requested relief, is DENIED

17
 18 DATED: 1 Oct, 2007


 PAUL BERNAL
 JUDGE OF THE SUPERIOR COURT



20 cc: Petitioner
 21 District Attorney
 Research (7-17B)
 CJIC

22
 23
 24
 25
 26
 27
 28

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, Robert Elvin Ventura V. 80485, declare:

I am over 18 years of age and a party to this action. I am a resident of C.S.P. SHU.

4A-3L-03 Corcoran Prison,

in the county of Corcoran,

State of California. My prison address is: P. O. Box 3476

Corcoran CA 93212-3476

On 6-12-08 (DATE)

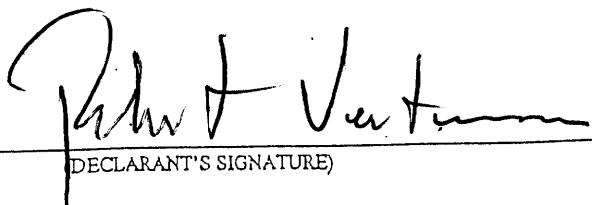
I served the attached: Motion for Reconsideration And Amended Motion for Appointment of Counsel. 28 U.S.C. 2255 8(c)
No. C08-01708 SBA (DESCRIBE DOCUMENT) (PR)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

OFFICE OF THE CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
1301 CLAY Street, 400 S. Tower
OAKLAND, CALIFORNIA 94612-5212

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 6-12-08 (DATE)



DECLARANT'S SIGNATURE)

ROBERT VENTURA V-30485
P.O. BOX 3476
CORCORAN CA 93212 - 3476

LEGAL MAIL

OFFICE OF THE CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
1301 CIVY STREET, 400 S. TOWER
OAKLAND, CALIFORNIA 94612-5212

CORCORAN STATE PRISON

